

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PAULA KEARNS	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 14-4353
BRISTOL TOWNSHIP	:	

ORDER

NOW, this 10th day of June 2015, upon consideration of Defendant's Motion for Leave to file an Amended Answer and Affirmative Defenses (ECF Doc. No. 34), and Plaintiff's Opposition (ECF Doc. No. 40), it is **ORDERED** Defendant's Motion for Leave is **GRANTED**.¹ Defendant shall file its Amended Answer and Affirmative Defenses **no later than June 11, 2015**.²



KEARNEY, J.

¹ As facially apparent and confirmed by nine months of litigation, Defendant's initial Answer (ECF Doc. No. 3) filed on August 20, 2014 contained human, or data processing, error resulting in the responsive paragraphs being wrongly numbered resulting in Defendant "admitting" the ultimate legal issue. Plaintiff did not catch this human error until raising it on June 1, 2015 (ECF Doc. No. 31) claiming Defendant judicially admitted the very actions it vigorously denied in the interim nine (9) months. Within days of notice of the human error, Defendant moved to amend its Answer. (ECF Doc. No. 34) *Lyons v. Beard*, No. 07-344, 2011 WL 2460930, *8, (M.D.Pa. June 17, 2011) Lawyers often have demanding days and this Court is particularly appreciative of the duty of zealous advocacy. Counsel should steer their vigor away from "gotcha" tactics causing *agita* but not improving the profession *inter se* or in the public perception.

²Plaintiff is not prejudiced by Defendant's liberal amendment of the Answer to match the proofs. There is no dispute the parties vigorously litigated these issues including in the summary judgment submissions. *Hartley v. Pocono Mtn. Regional Police Dist.*, No. 04-2045, 2009 WL 793034 (M.D.Pa. Mar. 24, 2009) *aff'd* 417 Fed.Appx. 153 (3d Cir. 2011). Plaintiff is not surprised nor is she harmed in responding to Defendant's summary judgment motion or at trial, as she never argued this alleged "admission" until after completing briefing on summary judgment and fully litigated the case knowing Defendant did not admit to the ultimate legal issue. The Amended Answer will now match the proofs and the parties' course of conduct.